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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DANIEL WILLIAM FORTHOFFER, MEDVILLE JAY
THROOP, AND BRIAN DAVID TILLMAN

Appeal 2015-000408
Application 12/755,030¹
Technology Center 3600

Before, JOSEPH A. FISCHETTI, BIBHU R. MOHANTY, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–12. We have jurisdiction under 35 U.S.C. § 6(b).

Claim 1 reproduced below, is representative of the subject matter on appeal.

1. An automotive vehicle comprising:

¹ Appellant identifies Ford Global Technologies, LLC as the real party in interest. Br. 1.

a modem configured to detect a wireless signal strength in a vicinity of the vehicle;
an antenna; and

a processor operatively arranged with the modem and antenna, and configured to (i) buffer records of vehicle information created at a scheduled acquisition rate, (ii) buffer event files of vehicle information created upon the occurrence of predetermined triggering events, (iii) cause the buffered records to be wirelessly transmitted via the antenna on a last-in first-out basis if the signal strength is greater than a first predetermined threshold, and (iv) cause the buffered files to be wirelessly transmitted via the antenna if the signal strength is greater than a second predetermined threshold.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

| | | |
|------|--------------|---------------|
| Kirk | US 5,916,300 | Jun. 29, 1999 |
| Hinz | US 5,991,626 | Nov. 23, 1999 |

The following rejections are before us for review.

Claims 1–12 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claims 1–11 are rejected under 35 U.S.C. § 103 as being unpatentable over Kirk in view of Hinz.

Claim 12 is rejected under 35 U.S.C. § 103 as being unpatentable over Kirk in view of Hinz and in further view of Official Notice.

ANALYSIS

We will not sustain the rejection of claims 1–12 under 35 U.S.C. § 101.

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us?” To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. [The Court] described step two of this analysis as a search for an “‘inventive concept’”—*i.e.*, an element or combination of elements that is “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.”

Alice Corp., Pty. Ltd. v CLS Bank Int’l, 134 S. Ct. 2347, 2355 (2014) (citations omitted) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289 (2012)).

Thus, to perform this test, we must first determine whether the claims at issue are directed to an abstract idea. If the claims are not directed to an abstract idea, the inquiry ends. *See Alice Corp.*, 134 S. Ct. at 2355.

We find that the rejected claims are not directed to an abstract idea. Claim 1 requires, *inter alia*, an automotive vehicle having an antenna and a processor. The processor is configured to *cause the buffered records to be wirelessly transmitted via the antenna on a last-in first-out basis if the signal*

strength is greater than a first predetermined threshold, and (iv) cause the buffered files to be wirelessly transmitted via the antenna if the signal strength is greater than a second predetermined threshold. Here, the claim is rooted in technology. We, thus, find that, when considered as a whole, claim 1 is directed to a technological improvement for an automotive vehicle by managing the transmission of data records using different thresholds depending on the size of the information to be transmitted: the smaller the size of the information to be transmitted, for example, the lower the threshold; the larger the size of the information to be transmitted, the higher the threshold. (Specification 3:11-15; *See McRO, Inc. v. Bandai Namco Games America, Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

35 U.S.C. § 103 REJECTION

Claim 1 the sole independent claim requires, *inter alia*, a processor configured to:

(ii) buffer event files of vehicle information created upon the occurrence of predetermined triggering events, (iii) cause the buffered records to be wirelessly transmitted via the antenna on a last-in first-out basis if the signal strength is greater than a first predetermined threshold, and (iv) cause the buffered files to be wirelessly transmitted via the antenna if the signal strength is greater than a second predetermined threshold.

Appellants argue,

Kirk does not cause the buffered records to be wirelessly transmitted via the antenna if the signal strength is greater than a first predetermined

threshold, and cause the buffered files to be wirelessly transmitted via the antenna if the signal strength is greater than a second predetermined threshold. Although Kirk may "automatically modify the current logging rate in response to an occurrence of a predetermined event," Kirk, col. 19, ll. 35- 36, this logging rate concerns the rate at which data is recorded (not transmitted), Kirk, col. 2, ll. 6-26. That is, Kirk does not make distinctions regarding what data is transmitted (buffered records vs. buffered files) based on the signal strength of its enabled radio link. Simply put, Kirk transmits data if its radio link is enabled and does not transmit data if its radio link is not enabled.

(Appeal Br. 3).

The Examiner however found, that Kirk discloses

(ii) buffer event files of vehicle information created upon the occurrence of predetermined triggering events (col. 7 lines 3-30, col. 8 lines 5-11), (iii) cause the buffered records to be wirelessly transmitted via the antenna if the signal strength is a radio link is broken (reads on, a first predetermined threshold", col. 5 lines 54-57, col. 10 lines 40-47)."... Kirk continues to teach (iv) causing the buffered files to be wirelessly transmitted via the antenna if the signal strength is a radio link is established (reads on, "greater than a second predetermined threshold", Fig. 2 element 280, col. 5 lines 39-51, col. 10 lines 18-22).

(Final Act. 2-3).

We agree with Appellants. The claims require two distinct thresholds, namely, a first predetermined threshold corresponding to when buffered *records* are wirelessly transmitted via the antenna, and a second

predetermined threshold corresponding to when buffered *files* are wirelessly transmitted via the antenna. While we agree with the Examiner that Kirk discloses the first threshold to when buffered records are transmitted when the radio link is unbroken (Column 5 lines 46-56), we disagree with the Examiner that the same event can be used to meet the required second predetermined threshold, let alone one for which the claim requires a different file type be transmitted by the antenna from the buffer. *See Texas Instr. Inc. v. United States Int'l Trade Comm'n*, 988 F.2d 1165, 1171 (Fed. Cir. 1993) (claim language cannot be mere surplusage. An express limitation cannot be read out of the claim); *Unique Concepts, Inc. v. Brown*, 939 F.2d 1558, 1563 (Fed. Cir. 1991) (two distinct claim elements should each be given full effect).

Since claims 2–12 depend from claim 1, and since we cannot sustain the rejection of claim 1, the rejection of claims 2–12 likewise cannot be sustained.

CONCLUSIONS OF LAW

We conclude the Examiner did err in rejecting claims 1–12 under 35 U.S.C. § 103.

We conclude the Examiner did err in rejecting claims 1–12 under 35 U.S.C. § 101.

DECISION

The decision of the Examiner to reject claims 1–12 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

REVERSED.